

AL-MAJALLA AL AHKAM AL ADALIYYAH (The Ottoman Courts Manual (Hanafi))

BOOK 1. SALE.

INTRODUCTION

TERM OF ISLAMIC JURISPRUDENCE RELATING TO SALE.

- 101. Offer is the statement made in the first place with a view to making a disposition of property and such disposition is proved thereby.
- 102. Acceptance is the statement made in the second place with a view to making a disposition of property. The contract becomes completed thereby.
- 103. Contract is what the parties bind themselves and undertake to do with reference to a particular matter. It is composed of the combination of offer and acceptance.
- 104. The conclusion of a contract consists of connecting offer and acceptance together legally in such a manner that the result may be perfectly clear.
- 105. Sale consists of exchanging property for property. It may be concluded or non-concluded.
- 106. A concluded sale is a sale in which there is a concluded contract. Such sales are divided into valid, voidable, executory, and conditional.
- 107. A non-concluded sale is a :
(1) It is a thing the benefit of which is lawful to enjoy;
(2) The other is acquired property.
Example:- A fish while in the sea is not of any specific value. When it is caught and taken, it becomes property of some specific value.
- 108. A valid sale, or a sale which is permitted, is a sale which is lawful both in itself and as regards matters incidental thereto.
- 109. A voidable sale is a sale which, while valid in itself, is invalid as regards matters incidental thereto. That is to say, it is a concluded sale in itself, but is illegal as regards certain external particulars. (See chapter VII.)
- 110. A void sale is a sale which is invalid in itself.
- 111. A conditional sale is a sale which is dependent upon the rights of some third party, such as a sale by an unauthorised person.
- 112. An unauthorised person is a person who, without any legal permission, deals with the property of some other person.
- 113. An executory sale is a sale not dependent upon the right of any third person. Such sales are divided into irrevocable and revocable sales.
- 114. An irrevocable sale is an executory sale to which no option is attached .
- 115. A revocable sale is an executory sale to which an option is attached.
- 116. An option means having the power to choose, as will be explained in the relevant chapter.
- 117. An absolute sale is a final sale.
- 118. A sale subject to a right of redemption is a sale in which one person sells property to another for a certain sum of money, subject to the right of redeeming such property, upon the price thereof being returned. Such a sale is considered to be permissible in view of the fact that the purchaser has a right to enjoyment of the property sold. It is also in the nature of a voidable sale inasmuch as the two parties have the right of cancelling the sale. Again, it is in the nature of pledge, in view of the fact that the purchaser cannot sell the property sold to any third party.
- 119. A sale with a right of usufruct is a sale subject to a right of redemption, the vendor having a right to take the property sold on hire.
- 120. Sales are also divided into four categories with reference to the thing sold:
1) Sale of property to another person for a price. This is the commonest category of sale and is consequently specifically called sale;
2) Sale by exchange of money for money;
3) Sale by barter; 4) Sale by immediate payment against future delivery.
- 121. Exchange of money for money consists of selling cash for cash.
- 122. Sale by barter consists of exchanging one specific object for some other specific object, that is to say, of exchanging property for property other than money.
- 123. Sale by immediate payment against future delivery consists of paying in advance for something to be delivered later, that is to say, to purchase something with money paid in advance, thereby giving credit.
- 124. A contract for manufacture and sale consists of making a contract with any skilled person for the manufacture of any thing. The person making the article is called the manufacturer; the person causing the article to be made is called the contractor for manufacture, and the object made is called the manufactured article.
- 125. Property held in absolute ownership is anything owned absolutely by man and may consist either of some specific object or of an interest therein.
- 126. Property consists of something desired by human nature and which can be put aside against time of necessity. It comprises movable and immovable property.
- 127. Property of some specific value is spoken of in two senses.
(1) It is a thing the benefit of which is lawful to enjoy;
(2) The other is acquired property.
Example:- A fish while in the sea is not of any specific value. When it is caught and taken, it becomes property of some specific value.
- 128. Movable property consists of property which can be transferred from one place to another. This includes cash, merchandise, animals, things estimated by measure of capacity and things estimated by weight.
- 129. Immovable property consists of property such as houses and land which are called real property and which cannot be transferred to another place.
- 130. Cash consists of gold and silver coins.
- 131. Merchandise consists of things such as goods and piece-goods other than cash, animals, things estimated by measure of capacity and things estimated by weight.
- 132. Things estimated by quantity are those things the amount of which is determined by any measure of capacity or of weight, or of number, or of length.
- 133. These articles repeat the measures of capacity etc. given in Articles 131 and 132 above.
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- 137. The expression 'possessing defined boundaries' refer to real property the boundaries and limits of which can be fixed.

- 138. undivided jointly owned property is property which contains undivided jointly owned shares.
- 139. An undivided jointly owned share is a share which extends to and includes every part of the jointly owned property.
- 140. By a particular species of thing is meant a thing in respect to which there is no disproportionate difference in so far as the component elements thereof are concerned.
- 141. A wholesale contract is a contract for sale en bloc.
- 142. Right of way is the right of passing over real property held in absolute ownership belonging to another.
- 143. The right of taking water is the right of taking a clearly defined and ascertained share of water from a river.
- 144. The right of flow is the right of discharging water and of letting water drip from a house to some place outside.
- 145. A common article is a thing the like of which can be found in the market without any difference of price.
- 146. A rare article is an article the like of which cannot be found in the market, or, if it can be found, is different in price.
- 147. Articles measured by enumeration and which closely resemble each other are those things in respect to which there is no difference as regards the price of each particular object. They are all in the nature of common articles.
- 148. Articles measured by enumeration and which are dissimilar from each other are those things in respect to which a difference in price exists as regards each particular article. They are all regarded as rare articles.
- 149. The fundamental basis or essence of sale consists of one piece of property being exchanged for another. Offer and acceptance are also referred to as the fundamental basis of sale, since they imply exchange.
- 150. The subject of sale is the thing sold.
- 151. The thing sold is the property disposed of, that is, the specific object specified at the sale and which constitutes the original object thereof, because enjoyment can only be had of specific objects, price being the means of exchanging property.
- 152. The price is the amount to be paid for the article sold, and entails liability to make payment.
- 153. The fixed price is a price mutually named and agreed upon by the two contracting parties whether corresponding to the real value or whether more or less.
- 154. The value is the real price of an article.
- 155. A priced article is a thing which is sold for a price.
- 156. A postponement of payment consists of putting off a debt to a definite date.
- 157. Payment by instalments consists of a postponement of payment of a debt in order that it may be paid at deferent and definite periods.
- 158. A debt is the thing which is proved to be owing.

Examples:-

- (1). A certain sum of money lent to A and owed by him;
- (2). A sum of money not immediately available;

- 159. A specific object is any which is definite and identified.

Examples:- A house; a horse; a chair; a heap of corn in existence; a sum of money. All these are specific.

- 160. The vendor is a person who sells property.
- 161. The purchaser is a person who buys.
- 162. The two parties to the sales are the vendor and the purchaser. They are also called the two contracting parties.
- 163. Rescission is setting aside and stopping a contract of sale.
- 164. Deceit is cheating.
- 165. Flagrant misrepresentation is representation which is practised with regard to no less than one twentieth in the case of merchandise; one tenth in the case of animals; and one fifth in the case of real property.
- 166. Time immemorial refers to that thing the origin of which is unknown to any person.

CHAPTER I. THE CONTRACT OF SALE.

SECTION I. FUNDAMENTAL BASIS OF SALE.

- 167. Sale is concluded by offer and acceptance.
- 168. In sale, offer and acceptance is made by the use of words commonly employed in the particular locality in making a contract of sale. (*) (An explanation of a Turkish word is not translated here as being of no significance to the English reader.)
- 169. The past tense is usually employed in offer and acceptance.

Example:-

(1). A vendor informs a purchaser that he has sold him a certain thing for one hundred piastres and the purchaser states that he has purchased it; or the purchaser states that he has bought a certain thing and the vendor afterwards states that he has sold such thing. The sale is concluded. In the first case the offer consists of the words "I have sold" and the acceptance of the words "I have purchased". In the second case the words "I have purchased" constitute the offer and the words "I have sold" the acceptance.

(2). The vendor, instead of stating that he has sold, states that he has given a person something or has transferred the property in it to him, and the purchaser instead of stating that he has purchased states that he has agreed thereto or has accepted. A valid contract of sale is concluded.

- 170. A contract of sale may be concluded by employing the futurist tense if it imports the present: but if the future is meant, no sale is concluded.
- 171. If the future tense is used is the sense of a mere promise, such as the statement "I will buy" or "I will sell" no sale is concluded.
- 172. No sale is concluded by the use of the imperative mood, such as the expression "sell" or "buy". But when the present tense is necessarily meant a sale may also be concluded by the use of the imperative mood.

Example:- A purchaser says to a vendor: " Sell me this article for so much money." No sale is concluded. But if the vendor says: "Take this article for so much money" and the purchaser replies saying: "I have taken it"; or if the purchaser says "I have taken it", and the vendor says, " take it" or " you may enjoy the benefit of it," a valid sale is concluded, the expressions "take" or "enjoy the benefit of it" being equivalent to "I have sold" and " take it".

- 173. Offer and acceptance may be made by writing as well as by word of mouth.
- 174. A dumb person may make a valid contract of sale by making use of generally recognised signs.

- 175. The fundamental object of offer and acceptance being the mutual agreement of the parties, a sale may also be concluded by any conduct of the parties which is evidence of offer and acceptance. This is called sale by conduct of the parties.

Examples:-

- (1) A purchaser without bargaining and without making any statement gives money to a baker and the baker delivers bread to the purchaser. A contract of sale is concluded.
- (2) A purchaser tenders money and takes a melon. The vendor remains silent. A contract of sale is concluded.
- (3) A purchaser wishes to buy corn. With this object in view he tenders five pounds to a corn merchant asking the latter to tell him at what price he sells corn. The corn merchant replies that he sells corn at one pound per kile. The purchaser thereupon remains silent, and later asks for the corn and the corn merchant states that on the following day he will deliver it to him. In this case a contract of sale has been concluded, although there has been no offer and acceptance by the parties. So much so that if on the following day corn has gone up half a pound in price per kile, the vendor is bound to deliver at one pound. If, on the other hand, the price of corn has gone down, the purchaser cannot refuse for this reason to accept delivery at the original price.
- (4) A purchaser asks a butcher to weigh him so much money's worth of meat from such and such a part. The butcher cuts the meat up and weighs it. A contract of sale has been concluded, and the purchaser cannot refuse to accept the meat.

- 176. If as a result of fresh bargaining after the conclusion of the contract, the price is changed, increased or decreased, the second contract is valid.

Example:- A contract is concluded for the purchase of an article for one hundred piastres. Later on fresh bargaining takes place and as a result the original hundred piastres is substituted for a gold piece of one hundred piastres, or for one hundred and ten piastres, or for one hundred and ten piastres or for ninety piastres. The second contract is valid.

SECTION II. AGREEMENT OF ACCEPTANCE WITH OFFER.

- 177. The acceptance of one of the two contracting parties must agree exactly with the offer of the other contracting party as regards the price or subject matter. Such party has no power to separate or divide either the price or the subject matter.

Example:-

- (1) A vendor tells a purchaser that he has sold him certain cloth for one hundred piastres and the purchaser agrees thereto. He is then obliged to take the whole of such cloth for one hundred piastres. He cannot claim to take the cloth or a half thereof for fifty piastres.
 - (2) A tells B that he has sold him two horses for three thousand piastres and B accepts. B must take the two for three thousand piastres. He cannot take one of them for one thousand five hundred piastres.
- 178. It is sufficient if the acceptance agrees with the offer by implication.

Examples:-

- (1) A vendor informs a purchaser that he has sold him certain property for a thousand piastres. The purchaser tells the vendor that he accepts for one thousand five hundred piastres. The contract of sale is for one thousand piastres. If the vendor, however, agrees to the increase of price at the time it is mentioned, the purchaser is bound to pay the additional five hundred piastres.
 - (2) A purchaser states that he has bought certain property for one thousand piastres. The vendor states that he has sold it for eight hundred piastres. A contract of sale has been concluded, and the two hundred piastres must be deducted.
- 179. If one of the two parties to a sale enumerates the prices of various articles, and proposes the sale of such articles en bloc and the other party accepts such offer, the latter may buy the whole lot for the whole price. If he does not do so, he may not divide up the lot and agree to buy any article he wishes at the fixed price.
- Example:-
- (1) A vendor states that he has sold two particular horses for three thousand piastres. The first one for one thousand piastres and the second for two thousand piastres; or each of them for one thousand five hundred piastres. The purchaser can take the two for three thousands piastres. He cannot, however, take the one he prefers of the two for the fixed price.
 - (2) A vendor states that he has sold three pieces of cloth for one hundred piastres. The purchaser states that he has bought one piece for one hundred piastres, or two pieces for two hundred piastres. No sale is concluded.

- 180. If one of the two parties to a sale enumerates the price of the various articles, and offers them for sale separately and the other party accepts the article he desires, at the fixed price, a contract of sale is concluded.

Example:- A vendor enumerates the prices of various articles for sale and repeats that he has sold them, this one for a thousand piastres and that one for two thousand piastres. In that case, the purchaser may accept one of the two for the fixed price and buy the same.

SECTION III. THE PLACE WHERE THE SALE IS CONCLUDED.

- 181. The place where the sale is concluded is the place where the parties meet together with a view to the conclusion of the sale.
- 182. Both parties possess an option during the meeting at the place of sale, after the offer has been made, up to the termination of the meeting.

Example:- One of the two parties to the sale makes an offer at the meeting place of the parties to the sale by stating that he has sold such and such property for a certain sum of money, or that he has bought such property, and the other party fails to state immediately afterwards that he has bought or has sold and some time later accepts at the same meeting. The sale is concluded, no matter how long the meeting may have lasted or how long the period between offer and acceptance may have been.

- 183. If one of the parties gives any indication of dissent after the offer and prior to acceptance, either by word or by deed, the offer becomes void and there is no longer any reason for acceptance.

Example:- one of the two parties to the sale, after stating that he has bought or that he has sold, occupies himself with some other matter, or discusses some other question. The offer becomes void, and thereafter the sale cannot be concluded by acceptance.

- 184. If one of the two parties to the sale makes an offer, but revokes such offer before the other party has accepted, the offer becomes void, and thereafter the sale cannot be concluded by acceptance.

Example:- A vendor states that he has sold such and such goods for so much money, but revokes such offer before the purchaser has accepted, and the purchaser later states that he has accepted such offer. No sale is concluded.

- 185. A renewal of the offer before acceptance cancels the first offer and its place is taken by the second offer.

Example:- The vendor states that he has sold such and such property for one hundred piastres, but before the purchaser has accepted, revokes the offer, and states that he has sold for one hundred and twenty piastres, and the purchaser accepts such offer. The first offer is of no effect, and the sale is concluded on the basis of one hundred and twenty piastres.

SECTION IV. SALE SUBJECT TO A CONDITION.

- 186. If a contract of a sale is concluded with an essential condition attached, both sale and condition are valid.

EXAMPLE:- A vendor sells subject to a right of retaining the thing sold until he has received payment of the price. This condition is no way prejudices the sale, but on the contrary is an essential condition of the contract.

- 187. In the case of a sale concluded subject to a condition of the object of which is to assure the due performance of the contract, both sale and condition are valid.

Example:- A certain thing is sold subject to the condition that some other thing shall be pledged or that a certain individual shall become a surety. Both sale and condition are valid. Moreover, should the purchaser fail to observe the condition, the vendor may cancel the sale. The reason for this is that these conditions assure the handing over of the price, which is an essential condition of the contract.

- 188. In the case of a sale concluded subject to a condition sanctioned by custom established and recognised is a particular locality, both sale and condition are valid.

Example :- The sale of a fur subject to a condition that it shall be nailed to its place; or of a suit of clothes subject to the condition that they shall be repaired. In these cases the condition must be observed in carrying out the sale.

- 189. In the case of sale subject to a condition which is not to the benefit of either party, the sale is valid, but the condition is voidable.

Example:- The sale of an animal subject to a condition that it shall not be sold to a third party, or that it shall be put out to graze. In such a case the sale is valid, but the condition is of no effect.

SECTION V RESCISSION OF THE SALE.

- 190. The two contracting parties may, by mutual agreement, rescind the sale after the conclusion of the contract.
- 191. As in the case of sale, rescission is carried out by means of offer and acceptance.

Example:- One of the two contracting parties states that he has rescinded or cancelled a sale and the other states that he has agreed thereto; or one of the parties tells the other to rescind the sale and the latter states that he has done so. The rescission is valid and the sale cancelled.

- 192. A valid rescission may also be effected by conduct which takes the place of offer and acceptance.
- 193. As in the case of sale, a meeting of the parties must take place in the case of rescission. That is to say, acceptance must be made known at the place where the offer is made. If this is done, and one of the contracting parties states that he has rescinded the sale, and the other party leaves without expressing his concurrence, or if one of the parties does anything which indicates dissent, the subsequent acceptance by the other is of no effect.
- 194. It is an essential condition that the thing sold should be in the possession of the purchaser at the time of the rescission. Consequently, if the thing sold is destroyed, the rescission is invalid.
- 195. If a portion of the thing sold is destroyed, rescission is valid as regards the remainder.

Example:- A vendor sells land he owns in absolute ownership, together with growing crops. After the crops have been reaped by the purchasers, the parties rescind the contract. The rescission is valid in so far as that part of the price concerning the land is concerned.

- 196. The loss of the price does not affect the validity of the rescission.

CHAPTER II. THE SUBJECT MATTER OF THE SALE.

SECTION I. Conditions affecting the subject matter of the sale and description.

- 197. The thing sold must be in existence.
- 198. The thing sold must be capable of delivery.
- 199. The thing sold must be property of some specific value.
- 200. The thing sold must be known to the purchaser.
- 201. The fact that the thing sold is known is ascertained by referring to its state and description which distinguish it from other things.

Example:- A specific quantity of red corn, or a piece of land bounded by specific boundaries. If these are sold, the nature thereof is known and the sale is valid.

- 202. If the thing sold is present at the meeting place of the parties to the sale, it is sufficient if such thing is pointed out by signs.

Example:- The vendor states that he has sold a particular animal. The purchaser sees that animal and accepts it. The sale is valid.

- 203. Since it is enough for the nature of the thing sold to be known to the purchaser, there is no need for any other sort of description or particularisation.
- 204. The thing sold must be the particular thing with reference to which the contract is concluded.

Example:- A vendor, pointing to a particular watch, states that he has sold it. Upon the purchaser accepting, the vendor is bound to deliver that identical watch. He cannot put that particular watch on one side and deliver another of the same sort.

SECTION II. Things which may and may not be sold.

- 205. The sale of a thing not in existence is void. Example:- The sale of the fruit of a tree which has not yet appeared is void.
- 206. The sale of fruit which is completely visible while on a tree is valid, whether it is fit for consumption or not.
- 207. The sale at one and the same time of dependent part which are connected together is valid. For example, in the case of fruit, flowers, leaves and vegetables, which do not arrive at maturity simultaneously, a portion thereof only having come out, that portion which has not yet arrived at maturity may be sold together with the rest.
- 208. If the species of the thing sold has been stated, and the thing sold turns out to be of another species, the sale is void. Example:- The vendor sells a piece of glass stating that it is a diamond. The sale is void.
- 209. The sale of a thing which is not capable of delivery is void. Example:- The sale of a rowing-boat which has sunk in the sea and cannot be raised, or of a runaway animal which cannot be caught and delivered.
- 210. The sale of a thing which is not generally recognised as property or the purchase of property therewith is void. Example:- The sale of a corpse or of a free man, or the purchase of property in exchange for them is void.
- 211. The sale of things which do not possess any specific value is void.
- 212. The purchase of property with property which does not possess any specific value is voidable.
- 213. The sale of a thing the nature of which is not known is voidable.

Example :- A vendor tells a purchaser that he has sold him the whole of the property he owns for a certain sum of money, and the purchaser states that he has bought the same. The nature of the things bought by the purchaser, however, is unknown. the sale is voidable.

- 214. The sale of an ascertained, jointly owned undivided share in a piece of real property owned in absolute ownership prior to division, such as a half, a third or a tenth, is valid.
- 215. A person may sell his undivided jointly owned share to some other person without obtaining the permission of his partner.
- 216. The sale of a right of way, and of a right of taking water and of a right of flow attached to land and of water attached to canals is valid.

SECTION III. PROCEDURE AT THE SALE.

- 217. The sale of things estimated by measure of capacity, or by weight, or by enumeration, or by length, may be sold individually or en bloc. Example :- A vendor sells a heap of corn, or a barn full of straw, or a load of bricks, or a bale of merchandise en bloc. The sale is valid.
- 218. If grain is sold in a specified vessel or measured in a measure, or by weighing it according to a fixed weight, the sale is valid, although the capacity of the vessel or measure, or the heaviness of the weight may not be known.

- 219. A thing which may be sold separately may validly be separated from the thing sold.

Example:- The vendor stipulates to retain a certain number of oke of the fruit of a tree that he has sold. The stipulation is valid.

- 220. The sale en bloc of things estimated by quantity on the basis of the price of each thing or part thereof is valid.

Example:- The sale of a heap of corn, a ship-load of wood, a flock of sheep, and a roll of cloth, on the basis of the price of each kile, or measure, or oke, or herd of sheep, or yard, is valid.

- 221. Real property may be sold by defining the boundaries thereof. In cases where the boundaries have already been defined, it may be sold by the yard or the donum.
- 222. The contract of sale is only valid in respect to the amount stipulated in the contract.
- 223. The sale of things estimated by measure of capacity, or by enumeration and which closely resemble each other and things estimated by weight, and which do not suffer damage by being separated from the whole, may be sold en bloc if the amount thereof is made known, whether the price is named in respect to the whole amount, or in respect to each individual unit. If on delivery the amount is found to be correct, the sale is irrevocable. If it is found to be short, however, the purchaser has the option of cancelling the sale, or of purchasing the amount actually delivered for the proportionate part of the price. If more than the stipulated amount is delivered, the excess belongs to the vendor.

Examples:-

(1). A vendor sells a heap of corn said to be fifty kiles, at five hundred piastres, or, on the basis of fifty kiles, at ten piastres a kile. If the amount delivered is correct, the sale is irrevocable. If forty-five kiles only are delivered, the purchaser has an option of cancelling the sale, or of taking forty-five kiles for four hundred and fifty piastres. If fifty-five kiles are delivered, the kiles in excess belong to the vendor.

(2). A basket of eggs said to contain one hundred is sold for fifty piastres, or at twenty paras for each egg. If it turns out on delivery that there are only ninety eggs, the purchaser has an option of cancelling the sale or of taking the ninety eggs for forty-five piastres. If one hundred and ten are delivered, the ten eggs remaining over belong to the vendor.

(3). A barrel of oil is sold as containing one hundred okes. The principle explained above applies.

- 224. In the case of the sale of a whole amount of things estimated by weight which suffer by being separated from the whole, the price of the whole amount only being named, the purchaser has the option of cancelling the sale on delivery, if the amount proves to be short, or of taking the portion delivered for the price fixed for the whole. If more than the amount is delivered, it belongs to the purchaser and the vendor has no option in the matter. Example:- A Diamond stated to be five carat is sold for twenty thousands piastres. It turns out to be four and a half carat. The purchaser has the option of rejecting the diamond, or of taking the stone for twenty thousand piastres. If it turns out to be five and a half carat, the purchaser can have it for twenty thousand piastres, the vendor having no option in the matter.
- 225. In the case of the sale of a whole amount of things estimated by weight which suffer damage by being separated from the whole, stating the amount thereof and the price fixed for parts or portions thereof, the purchaser has an option on delivery, if the amount delivered turns out to be less or more, of cancelling the sale, or of taking the amount delivered on the basis of the price fixed for the parts and portions thereof. Example:- A copper brazier said to weigh five okes is sold at the rate of forty piastres per oke. If it turns out to weigh either four and a half or five and a half okes, the purchaser has two options. He can either decline to accept the brazier, or, if it weighs four and a half okes he can purchase it for one hundred and eighty piastres, and if it weighs five and a half okes, he can purchase it for two hundred and twenty piastres.

- 226. In the case of the sale of a whole amount of things estimated by measure of length, whether land, goods, or similar things on the basis of the price for the whole amount, or of the price per yard, they are dealt with in both cases as in the case of things estimated by weight which suffer damage by being separated from the whole. Goods and articles such as linens and woollens which do not suffer damage by being cut and separated, are treated in the same manner as things estimated by measure of capacity.

Examples:-

(1). A piece of land said to measure one hundred yards is sold for one thousand piastres. It turns out to measure ninety-five yards only. The purchaser has an option of leaving it or of buying it for one thousand piastres. If it turns out to be larger, the purchaser can take the whole piece for one thousand piastres.

(2). A piece of cloth said to measure eight yards is sold for four hundred piastres with a view to being made up into a suit of clothes. It turns out to measure seven yards only. The purchaser has an option of leaving it or buying it for four hundred piastres. If it turns out to measure nine yards, the purchaser can take the whole piece for four hundred piastres.

(3). A piece of land said to measure one hundred yards is sold at the rate of ten piastres per yard. If it turns out to measure ninety-five or one hundred and five yards, the purchaser has an option of leaving it, or, if it turns out to be ninety-five yards, of buying it for nine hundred and fifty piastres, or if it turns out to be one hundred and five yards, of buying it for one thousand and fifty piastres.

(4). Some cloth said to measure eight yards is sold at the rate of fifty piastres per yard with a view to being made up into suit of clothes. If it turns out to measure seven or nine yards, the purchaser has an option of either rejecting it or, if it turns out to be seven yards, of buying it for three hundred and fifty piastres, and if it turns out to be nine yards of buying it for four hundred and fifty piastres.

(5). If a whole piece of cloth, however, said to measure one hundred and fifty yards is sold for seven thousand five hundred piastres, or at the rate of fifty piastres per yard, the purchaser has the option of cancelling the sale or of taking the hundred and forty yards for seven thousand piastres. If it turns out to be more, the balance belongs to the vendor.

- 227. In the event of the sale of things estimated by enumeration and which are dissimilar from each other, the price of the whole amount only named and the number of such things is found to be exact on delivery, the sale is valid and irrevocable. If the number is greater or smaller, however, the sale is voidable in both cases. Example:- A flock of sheep said to contain fifty head of sheep is sold for two thousand five hundred piastres. If on delivery the flock is found to consist of forty-five or fifty-five sheep, the sale is voidable.

- 228. In the event of the sale of a portion of a whole amount of things estimated by enumeration, and which are dissimilar from each other, stating the amount thereof, and a price calculated at so much per piece or per unit, and on delivery the number is found to be exact, the sale is irrevocable. If the number is found to be smaller, the purchaser has the option of leaving the things or of taking them for the proportionate share of the fixed price. If more than the stated number are delivered, the sale is voidable.

Example:- A flock of sheep said to consist of fifty is sold at the rate of fifty piastres per head. If it turns out to consist of forty-five head of sheep, the purchaser has the option of leaving them or of buying the forty-five head of sheep for two thousand two hundred and fifty piastres. If it turns out to be fifty-five head of sheep, the sale is voidable.

- 229. The purchaser, after having taken delivery of the thing sold, loses the option of cancelling the sale conferred upon him by the preceding Articles, if he knew that less than the stipulated amount had in fact been delivered.

SECTION IV. MATTERS INCLUDED BUT NOT EXPLICITLY MENTIONED IN THE SALE.

- 230. The sale includes everything which by local custom is included in the thing sold, even though not specifically mentioned. Example:- In the case of the sale of a house, the kitchen and the cellar are included; and in the event of the sale of an olive grove, the olive trees are included, even though not specifically mentioned. The reason for this is that the kitchen and cellar are appurtenances of the house, and the olive grove is so called because it is a piece of land containing olive trees. A mere piece of land, on the other hand, is not called an olive grove.

- 231. Things which are considered to be part of the thing sold, that is to say, things which cannot be separated from the thing sold, having regard to the object of the purchase, are included in the sale without being specifically mentioned.

Example:- In the case of the sale of a lock, the key is included; and in the case of the sale of a milch cow, the sucking calf of such cow is included in the sale without being specifically mentioned.

- 232. Fixtures attached to the thing sold are included in the sale, even though not specifically mentioned.

Example:- In the event of a sale of a large country house, things which have been fixed or constructed permanently, such as locks which have been nailed, and fixed cupboards and divans, are included in the sale. Similarly, the garden included in the boundaries of the house, together with the paths leading to the public road or to a blind alley are included in the sale, even though this was not specifically stated at the time the bargain was concluded.

- 233. Things which are neither appurtenances or permanent fixtures attached to the thing sold, and things which are not considered to be part of the thing sold, or things which are not by reason of custom included in the thing sold, are not included in the sale unless they are specifically mentioned at the time the sale was concluded. But things which by reason of local custom go with the thing sold, are included in the sale without being specifically mentioned. Example:- In the case of the sale of a house, things which are not fixtures, but have been placed so that they may be removed, such as cupboards, sofas and chairs, are not included in the sale unless specifically mentioned. And in the event of the sale of an orchard or a garden, flower pots, and pots for lemons and young plants which have been planted with a view to their removal elsewhere, are not included in the sale, unless specifically mentioned. Similarly when land is sold, the growing crops, and when trees are sold, the fruit thereof, are not included in the sale, unless some special stipulation to that effect was made at the time the bargain was concluded. But the bridle of the riding horse and the halter of a draught horse are included in the sale although not specifically mentioned, in places where such is the custom.

- 234. The thing included in the sale as being attached thereto is not a part of the price of such sale.

Example:- If the halters of draught horses are stolen before the delivery thereof, there is no necessity to deduct anything from the fixed price.

- 235. Things comprised in any general expressions added at the time of the sale are included in the sale.

Example:- The vendor states that he has sold a particular house " with all rights ". Any right of way, or right of taking water, or right of flow attaching to the house are included in the sale.

- 236. Any fruit or increase occurring after the conclusion of the contract and before the delivery of the thing sold belong to the purchaser.

Example:-

(1). In the case of the sale of a garden, any fruit or vegetables that are produced before delivery belong to the purchaser.

(2). Where a cow has been sold, a calf born before delivery of the cow becomes the property of the purchaser.

CHAPTER III. MATTERS RELATING TO PRICE.

SECTION I. NATURE OF AND CIRCUMSTANCES AFFECTING PRICE.

- 237. The price must be named at the time of the sale. Consequently, if the price of the thing sold is not mentioned, the sale is voidable.
- 238. The price must be ascertained.
- 239. The price is ascertained by being seen, if it is visible. If not, it is ascertained by stating the amount and description thereof.
- 240. If the price is stated to be so many gold coins in a locality in which different types of gold coins are in circulation, without stating the particular type of gold coin, the sale is voidable. The same rules applies to silver coins.
- 241. If the price is stated in piastres, the purchaser can give any type of coin he likes, provided that the circulation thereof is not forbidden.
- 242. When a contract is drawn up expressing the nature of the price, payment must be made in whatever kind of currency is mentioned.

Example:- A contract is made for payment in Turkish, English, or French pounds, or in pieces of twenty medjidies each, or in dollars. Payment must be made in whatever currency is stipulated.

- 243. Anything produced at the time of the conclusion of the contract cannot be regarded as determining the nature of the price.

Example:- A purchaser shows a gold piece of one hundred piastres which he has in his hand, and states that he has bought such and such a piece of property with that particular gold coin. The vendor agrees to sell. The purchaser is not obliged to give that particular gold coin itself, but may substitute for it another gold piece of one hundred piastres of the same type.

- 244. Fractions of coins may be given instead of a particular type of coinage. In this case, however, local custom must be followed.

Example:- A bargain is concluded for payment by medjidies of twenty piastres. Payment may also be made with pieces of ten and five. But in view of custom now prevailing in constantinople, fraction of pieces of forty and two may be given instead of pieces of twenty.

SECTION II. SALE SUBJECT TO PAYMENT AT A FUTURE DATE.

- 245. A valid sale may be concluded in which payment of the price is deferred and is made by instalments.
- 246. In the event of deferment and payment of the price by instalments, the period thereof must be definitely ascertained and fixed.
- 247. if a bargain is concluded with a promise for payment at some definite future date which is fixed by two contracting parties, such as in so many days, or months, or years time, or the 26th October next, the sale is valid.
- 248. If a bargain is concluded stipulating for payment at a time which is not clearly fixed, such as "when it rains " the sale is voidable.
- 249. If a bargain is concluded whereby credit is given for an undefined period, payment becomes due within one month.
- 250. The time agreed upon for deferred payment, or payment by instalments, begins to run from the time the thing sold is delivered. Example:- Goods are sold to be paid for in a year's time. The vendor after keeping them for a year, delivers them to the purchaser. The money must be paid after a period of one year from the date of delivery, that is, upon the expiration of precisely two years from the the time of the sale.
- 251. An unconditional sale is concluded with a view to payment forthwith. But in places where by custom an unconditional sale is concluded for payment by some definite date, or by instalments, payment becomes due on the date in question. Example:- A purchases a thing from the market without stipulating as to whether payment is to be made forthwith or whether purchased on credit. Payment must be made forthwith. But where by local custom the whole or a part of the price is payable at the end of a week or month, such custom must be observed.

CHAPTER IV. POWER TO DEAL WITH THE PRICE AND THE THING SOLD AFTER THE SALE.

SECTION I. RIGHT OF VENDOR TO DISPOSE OF THE PRICE AND OF THE PURCHASER TO DISPOSE OF THE THING SOLD AFTER THE CONCLUSION OF THE CONTRACT AND PRIOR TO DELIVERY.

- 252. The vendor has a right to dispose of the price of the thing sold before receiving the same.

Example:- A person who has sold property, of his own can transfer the price thereof to meet a debt.

- 253. If the thing sold is real property, the purchaser can sell such real property to another person before taking delivery thereof. He may not, however, sell movable property.

SECTION II. INCREASE AND DECREASE IN THE PRICE AND IN THE THING SOLD AFTER THE CONCLUSION OF THE CONTRACT.

- 254. The vendor may increase the amount of the thing sold after the conclusion of the contract. If the purchaser agrees to such increase at the meeting place of the parties, he has a right to insist upon such increase and the vendor may not go back upon his offer. An Acceptance by the purchaser after the meeting, however, is invalid.

Example:- A bargain is concluded for the purchase of twenty melons at twenty piastres. The vendor states that he has given five more. If the purchaser accepts at the meeting, he has the right of taking twenty-five melons for twenty piastres. If he fails to accept at the meeting however, but seeks to accept subsequently, the vendor cannot be obliged to give the additional number.

- 255. The purchaser may increase the fixed price after the conclusion of the sale. If the vendor accepts such increase at the meeting where the offer is made, he has the right to insist upon such increase and the purchaser may not go back upon his offer. If the vendor accepts after the meeting, however, such acceptance is invalid.

Example:- A bargain is concluded for the sale of an animal for one thousand piastres. After the conclusion of the sale, the purchaser states that he has added an additional two hundred piastres. If the vendor accepts at the meeting where the offer is made, he must pay one thousand two hundred piastres for the animal. If the vendor fails to accept at the meeting, however, but signifies his acceptance later, the purchaser cannot be forced to pay the additional two hundred piastres which he has undertaken to give.

- 256. The vendor may validly deduct a portion of the fixed price after the conclusion of the contract.

Example:- A bargain is concluded for the sale of certain property for one hundred piastres. Later, the vendor states that he has deducted twenty piastres. He can only obtain eight piastres for the property in question.

- 257. Any increase made by the vendor in thing sold and by the purchaser in the fixed price, or any decrease on the part of the vendor of the fixed price after the conclusion of contract becomes a part of the original contract. That is to say, such increase or decrease is contemplated as having been part of the original contract at the time such contract was concluded.
- 258. If the vendor increases the thing sold after the conclusion of the contract, the increase becomes part of the fixed price. Example:-
(1). A vendor adds two water melons to the eight water melons which he has sold for ten piastres. The purchaser agrees and the ten water melons are sold for ten piastres. If the two water melons are destroyed before delivery, the price thereof is deducted from the total price and the vendor can only demand eight piastres for the eight water melons.
(2). A vendor sells a piece of land measuring one thousand yards for ten thousand piastres. After the sale he adds one hundred yards, to which the purchaser agrees. If a person claiming a right of pre-emption comes forward, he can take the whole amount represented by the ten thousand piastres, that is to say, one thousand on hundred yards.
- 259. If the purchaser increases the fixed price after the conclusion of the contract, the sum total of the fixed price together with the increase becomes the corresponding value of the thing sold in respect to the two contracting parties. Example :- A purchaser buys a piece of real property held in absolute ownership for ten thousand piastres. Before taking delivery he adds five hundred piastres, to which the vendor agrees. The price of the real property in question is ten thousand five hundred piastres. If a person who is entitled to such property comes forward, proves his case, obtains judgement, and takes possession of the real property in question, the purchaser is entitled to claim the sum of ten thousand five hundred piastres from the vendor. If a person claiming a right of pre-emption to such real property comes forward, such person can take the real property in question for ten thousand piastres, but the vendor cannot claim the five hundred piastres subsequently added from the person claiming the right of pre-emption, because such person's right is based upon the fixed price in the original contract, the subsequent increase to the original contract, the subsequent increase to the original contract affecting the contracting parties only and in no way invalidating such person's claim.
- 260. If the vendor reduces the price of the thing sold after the conclusion of the contract, the remainder of the fixed price is the corresponding value of the whole of the thing sold.

Example:- A piece of real property held in absolute ownership is bought for ten thousand piastres. The vendor deducts one thousand piastres. The price of the real property is question is nine thousand piastres. Consequently, If a person claiming a right of pre-emption comes forward, he may take such property for nine thousand piastres.

- 261. The vendor may deduct the whole of the price of the thing sold before delivery, but this is not part of the original contract.

Example:- The vendor sells a piece of real property held in absolute ownership for ten thousand piastres. Prior to delivery he forgoes the price thereof altogether. A person claiming to have a right of pre-emption may take such property for ten thousand piastres. He may not claim to take it for nothing.

CHAPTER V. GIVING AND TAKING DELIVERY.

SECTION I. PROCEDURE ON GIVING AND TAKING DELIVERY.

- 262. Taking delivery is not an essential condition of sale. After the conclusion of the contract, however, the purchaser must first deliver the price to the vendor, and the vendor is then bound to deliver the thing sold to the purchaser.
- 263. The thing sold must be delivered in such a way that the purchaser may take delivery thereof without hindrance. The vendor must give permission for such delivery.
- 264. As soon as the thing sold has been delivered, the purchaser is considered to have taken delivery thereof.
- 265. The method of delivery differs, according to the nature of the thing sold.
- 266. If the purchaser in on a piece of land, or in any field, or if the purchaser sees such land or fields from near by, any permission given by the vendor to take delivery thereof, is considered to be delivery.
- 267. If land is sold upon which crops are growing, the vendor must clear the land of such crops by reaping them or by pasturing animals thereon.
- 268. In the event of delivery of a tree bearing fruit, such fruit must first be gathered and the tree then handed over by the vendor.
- 269. If fruit is sold while upon a tree, and the vendor gives permission to the purchaser to pick such fruit, delivery thereof has been effected.
- 270. If the purchaser is within any real property, such as a house or an orchard, which can be closed by locking, and is informed by the vendor that the latter has delivered such real property to him, delivery thereof has been effected. If he is outside such property, and the purchaser is so near thereto that he could immediately lock the same, delivery thereof is effected by the vendor merely stating that he has made delivery. If he is not in such close proximity to such property, however, delivery is effected after the expiration of such time as is necessary for him to arrive and enter therein.
- 271. Delivery of real property which can be locked is effected by handing over the key.
- 272. Delivery of an animal is taken by seizing it by the head or by the ear or by the halter. Delivery of such animals may also be given by the vendor merely pointing to them and giving permission for them to be taken, if they are in such a place that the purchaser can take delivery thereof without inconvenience.
- 273. Delivery of things estimated by measure of capacity, or by weight, may be given by placing them in a cover or receptacle prepared by order of the purchaser.
- 274. Delivery of articles of merchandise is effected by placing them in the hands of the purchaser or by placing them beside him, or, if they are exposed to view, by pointing to them and giving him permission to take them.
- 275. Delivery of things sold en bloc and kept in a locked place, such as a store or box, is effected by giving the key to the purchaser and giving him permission to take them.
Example:- A store full of corn or a box of books is sold en bloc. Delivery of things sold is effected by handing over the key.
- 276. If the purchaser takes delivery of the things sold and the vendor, seeing this, makes no objection, permission to take delivery is given.
- 277. If the purchaser takes delivery of the thing sold without paying the price and without the permission of the vendor, such taking delivery is invalid. But if the thing sold is taken by the purchaser without permission and is destroyed or damaged while in his possession, such taking delivery is invalid.

SECTION II. RIGHT OF RETENTION OVER THE THING SOLD.

- 278. In the case of a sale for immediate payment, the vendor has a right of retaining the thing sold until the price is fully paid by the purchaser.
- 279. If the vendor sells various articles en bloc, the whole of the things sold may be retained until the full price has been paid, even though a separate price has been stated for each article.
- 280. The fact that a pledge or a guarantor has been furnished by the purchaser does not invalidate the vendor's right of retention.
- 281. If the vendor gives delivery of the thing sold without receiving the price, he loses his right of retention. He cannot ask for the return of the thing sold in order to hold it until payment of the price is made.
- 282. If the vendor transfers the right of receiving the price of the thing sold from the purchaser to some other person, he loses his right of retention. In this case, the thing sold must be delivered to the purchaser forthwith.
- 283. In the case of a sale on credit, there is no right of retention on the part of the vendor. He must deliver the thing sold to the purchaser forthwith in order to receive payment on due date.
- 284. Should the vendor postpone payment of the price after having sold for immediate payment, he loses his right of retention. He must hand the thing sold to the purchaser forthwith in order to receive payment on due date.

SECTION III. THE PLACE OF DELIVERY.

- 285. In an unconditional contract the thing sold must be delivered at the place where it was when the sale was concluded.

Example:- A sells wheat at Tekfur Dagħ to B in Constantinople. A delivers the wheat in Tekfur Dagħ. He cannot be forced to deliver the wheat in Constantinople.

- 286. If at the time of the sale the purchaser did not know where the thing sold was, but received information thereof after the conclusion of the contract, he has an option. He may either cancel the sale, or take delivery of the thing sold at the place where it was at the time the sale was concluded.
- 287. Property sold with a condition for delivery at a given place must be delivered at that place.

SECTION IV. EXPENSES CONNECTED WITH DELIVERY.

- 288. Expenses connected with the price fall upon the purchaser.

Example:- Fees in connection with money-changing, such as counting and weighing the money, fall upon the purchaser.

- 289. Expenses connected with the delivery of the thing sold fall upon the vendor.

Example:- Fees of measurers and weighers must be borne by the vendor.

- 290. Any charges connected with things sold en bloc must be borne by the purchaser. Examples:-
(1). If grapes in an orchard are sold en bloc, the purchaser must gather them.
(2). If a store full of corn is sold en bloc, the purchaser must take such corn away from the store.
- 291. In the case of things sold which are loaded upon animals, such as wood and charcoal, the question of transport to the house of the purchaser is decided in accordance with local custom.
- 292. The cost of drawing up contracts and written instruments falls upon the purchaser. The vendor, however, must declare the sale and attest the same in Court.

SECTION V. DESTRUCTION OF THE THING SOLD.

- 293. If the thing sold is destroyed while in the possession of the vendor prior to delivery, no liability attaches to the purchaser, and the loss must be borne by the vendor.
- 294. If the thing sold is destroyed after having taken delivery, no liability attaches to the vendor, and the loss must be borne by the purchaser.
- 295. If the purchaser dies bankrupt after having taken delivery of the thing sold, but without having paid the price, the vendor cannot demand the return of the thing sold, but becomes one of the creditors.
- 296. If the purchaser dies bankrupt before the delivery of the thing sold and payment of the price, the vendor has a right of retaining the thing sold until payment has been made from the estate of the purchaser. Thus, the thing sold is disposed of by the Court and if the sum realised is sufficient, the amount due to the vendor is paid in full, any surplus being paid to the other creditors. If less than the sum due to the vendor is realised, the full amount thereof is paid to the vendor, and the balance still remaining due is deducted from the estate of the purchaser.
- 297. If the vendor dies bankrupt after having received the price, but without having delivered the thing sold to the purchaser, such thing remains in the possession of the vendor on trust. Thus, the purchaser takes the thing sold, and the other creditors cannot intervene.

SECTION VI. SALE ON APPROVAL AND SUBJECT TO INSPECTION.

- 298. If property bought on approval as to price, that is to say, property the price of which has been fixed, is delivered to the purchaser and while in his possession is destroyed or lost, the price thereof must be paid to the vendor, if it is in the nature of a thing the like of which cannot be found in the market. If it is a thing the like of which can be found in the market, a similar article must be given to the vendor. If the price has not been fixed, however, it is considered to be in the possession of the purchaser on trust, and if it is destroyed or lost without any fault of the purchaser, there is no need to make good the loss.

Example:- A vendor offers an animal for one thousand piastres, asking the purchaser to buy it if he is pleased with it. If the purchaser takes it with a view to buying it and the animal is destroyed while in his possession, the purchaser must pay the price to the vendor. But if the price is not stated and the vendor asks the purchaser to buy the animal if he is pleased with it, and the purchaser, being satisfied with it, later to enter into negotiations with a view to purchase, and the animal is destroyed without any fault of the purchaser, while in the latter's possession, the purchaser is not obliged to make good the loss.

- 299. If delivery is taken of the property on approval subject to inspection, that is today, to be examined or shown, and such property is destroyed or lost while in the possession of the prospective purchaser without any fault on his part, such purchaser is considered to have held the property on trust and there is no need to make good the loss, whether the price has been stated or not.

CHAPTER VI. OPTIONS.

SECTION I. CONTRACTUAL OPTIONS

- 300. The vendor, or the purchaser, or both, may insert a condition in the contract of sale giving them an option, within a fixed period, to cancel the sale or to ratify it by carrying out the term thereof.
- 301. The person in the enjoyment of an option conferred by the contract is empowered either to cancel or to ratify the contract within the period of the validity of the option.
- 302. Both cancellation and ratification of the contract may be by word of mouth or by conduct.
- 303. Words importing ratification are words implying satisfaction, such as, "I ratify", or "I am pleased". Words importing cancellation are words implying dissatisfaction such as, "I have cancelled" or, "I have gone back".
- 304. Acts importing ratification are those acts implying satisfaction and acts importing cancellation are those acts implying dissatisfaction.

Example:- A purchaser having a right to an option performs some act within the period during which the option is valid, indicative of a right of ownership in such property, such as putting it up for sale, or pledging it, or letting it on hire. Such act is an act of ratification by conduct. If the vendor has an option and deals with the property in the same way, it is an act of cancellation by conduct.

- 305. If the person in possession allows the period during which the option is valid to expire without either cancelling the sale or ratifying it, the sale becomes irrevocable.
- 306. An option conferred by contract is not transmissible by way of inheritance. Thus, if the person possessing the option is the vendor, the purchaser becomes the owner of the thing sold upon the death of the vendor. If the purchaser is the person having the option and dies, his heirs become owners of the thing sold without any option.
- 307. If both vendor and purchaser have an option, the sale can be cancelled by whichever party so desires. If one party only ratifies, that party loses his option, the other retaining his.
- 308. If the vendor alone has an option, he does not lose his title in the thing sold, which is still considered to be a part of his own property. If the thing sold is destroyed while in the possession of the purchaser after delivery thereof, the fixed price does not become due, but the purchaser must pay the value thereof on the day he took delivery.
- 309. If the purchaser alone has an option he acquires a title in the thing sold, which is considered to be a part of his own property. If the thing sold is destroyed while in the possession of the purchaser after delivery thereof, the fixed price must be paid.

SECTION II. OPTION FOR MISDESCRIPTION.

- 310. If the vendor sells property as possessing a certain desirable quality and such property proves to be devoid of such quality, the purchaser has the option of either cancelling the sale, or of accepting the thing sold for the whole of the fixed price. This is called option for MISDESCRIPTION. Examples:-
(1). If a cow is sold described as giving milk and it proves that she has ceased to give milk, the purchaser acquires an option.
(2). If a stone sold at night-time as a red ruby proves to be yellow ruby, the purchaser acquires an option.
- 311. The option for misdescription is transmissible by way of inheritance. That is to say, that if on the death of the purchaser who has an option for misdescription, it turns out that the thing sold does not conform to the description given, the heir also has the power of cancelling the sale.
- 312. If the purchaser having an option for misdescription deals with the thing sold in manner indicative of a right of ownership over such thing, he loses his option thereby.

SECTION III. OPTION AS TO PAYMENT.

- 313. Vendor and purchaser may validly conclude a bargain whereby payment of the price is to be made by a certain time and in the event of payment not being made, the sale is not to take place. This option is called an option as to payment.
- 314. If the purchaser does not pay the price within the stipulated period, a sale concluded subject to an option as to payment is voidable.
- 315. If a purchaser having an option as to payment dies within the prescribed period, the sale is void

SECTION IV. OPTION AS TO SELECTION.

- 316. A stipulation may validly be made in a sale whereby the purchaser may take whichever he likes of two or three things at different prices the like of which cannot be found in the market, or the vendor may give whichever one he pleases. This is called an option as to selection.
- 317. A period must be fixed during which the option as to selection is valid.
- 318. A person having an option as to selection is bound to choose the thing he has bought on the expiration of the prescribed period.
- 319. An option as to selection is transmissible by way of inheritance.

Example:- If the vendor sells three pieces of cloth all being of one type and consisting of superior, medium and inferior quality, the purchaser to take the piece he prefers within a period of three or four days, and such purchaser agrees thereto, a valid sale is concluded, and on the expiration of the stipulated period, the purchaser must choose one and pay the fixed price thereof. If he dies before exercising his option, his heir must choose one in the same manner.

SECTION V. OPTION AS TO INSPECTION.

- 320. If a person buys a piece of property without seeing such property, he has an option upon inspection thereof of either cancelling the sale or of ratifying it. This is called option as to inspection
- 321. The option of inspection is not transmissible by way of inheritance. Consequently, if the purchaser dies without having seen the property which he has bought, his heir becomes owner of the property without having any option in the matter.
- 322. No option of inspection accrues to the vendor who sells property without seeing it .

Example:- A sells property which he has not seen and which has come to him by way of inheritance. The sale is concluded without any right of option.

- 323. The object of the option of inspection is to ascertain the nature of the thing sold and the whereabouts thereof. Example:- A person who examines the outside of a plain piece of cloth which is the same on both sides; or a piece of cloth marked with stripes or flowers; or the teat of a sheep bought for breeding; or the back of a sheep bought for killing; or who tries the taste of things for eating and drinking and who later makes a purchase, has no option of inspection.
- 324. It is sufficient to see a sample produced of things sold by sample.
- 325. If the thing sold proves to be inferior to the sample, the purchaser has an option of taking or rejecting it. Example:- If such things as corn or oil, and linen or wool manufactured so as to conform to a set standard of excellence are bought after inspecting a sample thereof, and are later found not to come up to sample, the purchaser has an option.
- 326. In the purchase of real property such as an inn or a house, every room must be inspected. If the rooms are all of one type, however, it is sufficient to inspect one of the rooms.
- 327. When things which are dissimilar to each other are purchased en bloc, each one must be inspected separately.
- 328. If the purchaser buys things which are dissimilar from each other en bloc and inspects some of them and fails to inspect the rest, and upon inspection of the latter, is dissatisfied therewith, he has the option of accepting or rejecting the whole lot. He may not take those with which he is satisfied and reject the rest.
- 329. A blind person may validly buy and sell, but if he buys property the description of which is unknown to him, he has an option.

Example:- If he buys a house the description of which is unknown to him, he has an option, upon learning the description thereof, of accepting or rejecting.

- 330. A blind person has no option if he purchases a thing which has been described to him beforehand.
- 331. If a blind person touches anything the nature of which can be ascertained by means of the sense of touch, and smells things the nature of which can be ascertained by means of the sense of smell, and tastes things the nature of which can be ascertained by means of the sense of taste, his right of option is destroyed. That is to say, if he touches or smells such things and afterwards purchases them, the sale is valid and irrevocable.
- 332. If a person who has inspected a piece of property with a view to purchase later buys such property knowing it is the property in question, such person has no option of inspection. Should any change have been made in such property, however such person has an option.
- 333. Inspection by an agent authorised to buy or receive the thing sold, is equivalent to inspection by the principal.
- 334. Inspection by a messenger, that is to say, a person sent, who merely has the power of collecting and dispatching the thing sold, does not destroy the purchaser's option of inspection.
- 335. If the purchaser deals with the thing sold in any way indicative of a right of ownership, his option of inspection is destroyed.

SECTION VI. OPTION FOR DEFECT.

- 336. In an unconditional sale, the thing sold must be free from any defect. that is to say, although property is sold without stipulating that it shall be free from faults, and without stating whether it is sound, or bad, or defective, or free from fault, such property nevertheless must be sound and free from defect.
- 337. If some defect of long standing is revealed upon the unconditional sale of any piece of property, the purchaser has the option of rejecting it or accepting it for the fixed price. He cannot keep the property and reduce the price on account of the defect. This is called the option of defect.
- 338. A defect consists of any faults which, in the opinion of persons competent to judge, cause a depreciation in the price of the property.
- 339. A defect of long standing is a fault which existed while the thing sold was in the possession of the vendor.
- 340. Any defect which occurs in the thing sold after sale and before delivery, while in the possession of the vendor, is considered a defect of long standing and justifies rejection.
- 341. If the vendor declares at the time of sale that there is a defect in the thing sold, and the purchaser accepts the thing sold with the defect, he has no option on account of such defect.

- 342. If the vendor sells property subject to the condition that he shall be free from any claim on account of any defect, the purchaser has no option on account of the defect found therein.
- 343. If a purchaser buys property, including all defects, he cannot make any claim on account of any defect found therein.
Example:- If a purchaser buys an animal with all faults of any description whatsoever whether blind, lame, or worthless, he cannot return such animal asserting that it had a defect of long standing.
- 344. If the purchaser after becoming aware of a defect in the thing sold performs any act indicative of the exercise of a right of ownership, he loses his option of defect.
Example:- The purchaser, after becoming aware of the existence of a defect of long standing in the thing sold, offers such thing for sale. He is taken to have acquiesced therein and cannot reject the thing sold.
- 345. If a defect appears in the thing sold while in the possession of the purchaser, and it proves to be a defect of long standing, the purchaser has no right to return the thing sold to the vendor, but has a right to claim a reduction in the price.
Example:- If the purchaser discovers a defect of long standing in the thing he has purchased, such as a piece of cloth which after being cut up and measured is found to rotten and frayed, he cannot return the same, because by cutting it he caused a fresh defect. He can, however, claim a reduction in the price on account of the defect.
- 346. The amount of the reduction in the price is ascertained by a report drawn up by impartial experts. With this object in view, the value of the thing sold when sound and also when defective is ascertained, and a reduction is made from the fixed price on the basis of the difference between the two prices.
Example:- A purchaser after buying a roll of cloth for sixty piastres and cutting it up and measuring it becomes aware of a defect of long standing. Experts estimate the value of such property at sixty piastres when sound and with the defect of long standing at forty-five piastres. The reduction to be made in the price is fifteen piastres, and the purchaser has a right to make a claim for that amount. If the expert report that the Value of such property when sound was eighty piastres and with the defect sixty piastres, the difference of twenty piastres between the two prices, that is to say a fourth of eighty piastres or a quarter of the fixed price may be claimed by the purchaser. If the value of the cloth when sound is reported to be fifty piastres and with the defect forty piastres, the difference of ten piastres between the two, that is to say, one fifth of the fixed price, is considered to be amount to be deducted from the price .
- 347. If a defect of recent origin disappears, a defect of long standing still justifies rejection.
Example:- Horse is purchased and falls sick while in the possession of the purchaser. Thereupon a defect of long standing is revealed. The purchaser is unable to return the horse, but can obtain a reduction in the price. If the animal recovers from the illness, the purchaser can return the horse to the vendor on account of the defect of long standing.
- 348. If the vendor agrees to take back the thing sold after the occurrence of a defect while in the possession of the purchaser which reveals a defect of a long standing, and should there be nothing to prevent its return, the purchaser cannot claim a reduction in price, but must either return the thing sold or keep it and pay the full price. Should the purchaser sell the property to some third person after becoming aware of the existence of the defect of long standing, he is in no way entitled to claim a reduction of price.
Example:- A purchaser buys a roll of linen and cuts it up to make shirts. He then finds it to be defective and sells it. He cannot claim any reduction of the price from the vendor. The reason for this is that while the vendor may state that he would take back the stuff with the defect of recent origin, that is to say, cut up, the sale thereof by the purchaser is tantamount to an adoption of the defect.
- 349. Any increase, that is to say, any addition of property belonging to the purchaser to the thing sold makes any return thereof impossible.
Example:- A purchaser adds certain sewing or dyeing with his own thread or colour to a piece of cloth; or the purchaser of a piece of land plants trees therein. such acts prevent the return of the thing sold.
- 350. If there is anything to prevent the return of the thing sold, the vendor cannot receive back the defective thing sold, even though he is willing to do so, but must make a reduction in price. If the purchaser becomes aware of the existence of a defect of long standing in the property in question and sells the same, he can demand a reduction in price from the vendor.
Example:- A purchaser buys a roll of linen to make into shirts. After measuring them and sewing them, he finds that the linen is defective. He cannot ask for the linen to be taken back, even though the vendor is prepared to do so. The vendor is obliged to make a reduction in the price. If the purchaser sells the shirts, he can recover the reduction in the price from the vendor. The reason for this is that the thread belonging to the purchaser has been added to the thing sold and prevents its return. The vendor cannot say that he will take the thing back after it has been cut up and sewn, and the purchaser is not considered to have kept back the thing sold from the vendor.
- 351. Before taking delivery, the purchaser may reject the whole of a number of things bought en bloc, if some of them prove to be defective, or he may elect to take them for the fixed price. He cannot reject the things which are defective and keep the rest. If the defect becomes apparent after delivery, and no loss is incurred by separation, he can return that portion in which the defect has appeared, against a proportionate share of the fixed price when sound. He cannot return the whole unless the vendor agrees thereto. If any loss is caused by the separation, however, he may return or keep the whole amount at the fixed price.
Example:- If one of the two fezzes bought for forty piastres proves to be defective before delivery, both can be rejected together. If one of them proves to be defective after delivery, he can return that fez, deducting the value of such fez when sound from the forty piastres. If he has bought a pair of shoes, however, and after delivery, one of them turns out to be defective, he can return them both and can demand the return of the whole of his money.
- 352. If a person who has bought and taken delivery of a definite number of things estimated by measure of capacity or weight and which are of one type, finds a portion thereof to be defective, he has the option of accepting or rejecting the whole number.
- 353. If cereals such as wheat prove to be earthy, though to an extent considered by custom to be negligible, the sale is valid and irrevocable. If, however, such cereals are considered by local opinion to be positively defective, the purchaser has an option.
- 354. If such things as eggs and nuts prove to be bad and defective but not to a greater extent than that sanctioned by custom, such as three per cent, the sale is valid. If the defect is considerable, however, such as ten per cent, the sale is invalid and the purchaser can return the whole amount to the vendor and recover the entire price.
- 355. If the thing sold appears to be in such a state that no benefit can ever be derived therefrom, the sale is void and the purchaser can recover the whole of the price.
Example:- If eggs which have been bought prove to be so bad that they are useless, the purchaser can recover the whole of his money.

SECTION VII. MISREPRESENTATION AND DECEIT.

- 356. The existence of flagrant misrepresentation in a sale, but without actual deceit, does not enable the person who has been the victim of such misrepresentation to cancel the sale. But if the sale of the property of orphans is tainted by flagrant misrepresentation, although there is no actual deceit, such sale is invalid. Property belonging to a pious foundation and to the treasury is treated on the same basis as the property of orphans.
- 357. If one of the two parties to the sale deceives the other, and flagrant misrepresentation is also proved to be present in the sale, the person so deceived can cancel the sale.
- 358. If the person who is the victim of flagrant misrepresentation dies, no right to an action for deceit is transmitted to his heirs.
- 359. If the purchaser who is the victim of deceit becomes aware that the sale is tainted by flagrant misrepresentation and deals with the thing sold in any manner indicative of a right of ownership, he has no right whatsoever to cancel such sale.
- 360. If a thing sold which has been bought as a result of deceit or flagrant misrepresentation is destroyed, or perishes, or becomes defective, or if something new is added, such as a building to a piece of land, the victim of such misrepresentation has no right to cancel the sale.

CHAPTER VII. VARIOUS CATEGORIES OF THINGS SOLD AND THE EFFECT THEREOF.

SECTION I. TYPES OF SALE.

- 361. It is a condition precedent to the conclusion of the sale that the parties thereto should be sound of mind and of perfect understanding and that the sale should be made with reference to some thing which may properly be subject of sale.

- 362. A sale which is defective in any essential condition, such as sale by lunatic, is void.
- 363. In order that any object may properly be the subject of sale, such object must be in existence, must be capable of delivery, and must be of some specific value. Consequently, the sale of thing which is not in existence, or is incapable of delivery, or is not of any specific value, is void.
- 364. If a sale is concluded validly, but is not legal as regards certain subsidiary matters, such as the thing sold being unknown, or defective as regards the price, the sale is voidable.
- 365. For a sale to be executory, the vendor must be the owner of the thing sold, or the agent of the owner, or his tutor or guardian, and no other person must be entitled thereto.
- 366. Avoidable sale becomes executory on taking delivery. That is to say, the purchaser may deal with the thing sold.
- 367. If one of the options attaches to the sale, such sale is not irrevocable.
- 368. A sale dependent upon the right of some third person may validly be concluded if the permission of such person is obtained, as in the case of a sale by an unauthorised person, to the sale of property given as a pledge.

SECTION II. EFFECT OF VARIOUS KINDS OF SALE.

- 369. The effect of the conclusion of a sale is ownership, that is to say, the purchaser becomes the owner of the thing sold and the vendor becomes the owner of the price.
- 370. A sale which is void is of no effect whatsoever. Consequently, if in the case of a sale which is void, the purchaser has taken delivery of the thing sold with the permission of the vendor, and such thing is destroyed without the fault of the purchaser while in his possession, there is no necessity for the purchaser to make good the loss, the thing sold being in the nature of a thing deposited on trust.
- 371. A voidable sale, on delivery, is effective, that is to say, if the purchaser takes possession of the thing sold with the permission of the vendor, he becomes the owner thereof. Consequently, if a thing bought as the result of a voidable sale is destroyed while in the possession of the purchaser, the purchaser must make good the loss. If the thing sold is one the like of which can be found in the market, a like thing must be given by the purchaser to the vendor, or if it is a thing the like of which cannot be found in the market, the value thereof on the day of delivery must be paid.
- 372. In the case of a voidable sale, each of the contracting parties has the right of cancelling the sale. But if the thing sold is destroyed while in the possession of the purchaser, or if the purchaser disposes of it in any way, such as consuming it, or selling it validly to some other person, or bestowing it upon someone by way of gift, or if the thing sold being a house, the purchaser adds to it in any way, such as repairing it, or, if it is a piece of land, planting trees on it, or, if it is corn, changes it by grinding it into flour, so that its name is changed there is no right of cancellation.
- 373. In the case of cancellation of a voidable sale, if the price has been received, the purchaser has the right of retaining the thing sold until the vendor has returned the price.
- 374. An executory sale becomes effective forthwith .
- 375. An executory sale is irrevocable, and neither of the two parties to the sale may go back thereon.
- 376. In the case of a revocable sale, a person possessing an option can cancel such sale.
- 377. A conditional sale becomes effective when the necessary permission is given.
- 378. In the event of a sale by an unauthorised person, such sale is executory if the owner of the property, or his agent, or his tutor, or his guardian give their permission. Otherwise it is of no effect. For the permission to be effective, however, it is necessary for the vendor, the purchaser, the person giving permission and the thing sold to be in existence. If any of these is absent permission is invalid.
- 379. In the case of sale by barter, the conditions applicable to a thing sold also apply, since the value of the two things exchanged is considered to constitute a thing sold. If a dispute arises as to delivery, however, the two parties to the sale must respectively give and take delivery simultaneously.

SECTION III. SALE BY IMMEDIATE PAYMENT AGAINST FUTURE DELIVERY.

- 380. A contract of sale by immediate payment against future delivery is concluded by offer and acceptance, as in the case of sale.
Example :- A purchaser tells a vendor that he has paid a thousand piastres immediately against future delivery of one hundred kiles of c corn. The vendor agrees. A contract of sale by immediate payment against future delivery has been concluded.
- 381. A sale by immediate payment against future delivery can only be concluded validly with reference to things the quantity and quality of which can be determined; for example, the highest and lowest.
- 382. The amount of things estimated by measure of capacity or by weight or by length is fixed by the kile, the weight, or the yard.
- 383. The amount of things estimated by enumeration and which closely resemble each other may be measured by counting, and also by the kile and by weight.
- 384. In the case of things estimated by enumeration, such as burnt bricks and sun-dried bricks, the mould thereof must be made known.
- 385. The length, breadth and thickness of things measured by length, such as linen and woollens, the material they are made from, and the place in which they were made, must be stated.
- 386. It is essential to the validity of a sale by immediate payment against future delivery that the type of thing sold should be stated; for instance, corn, rice or dates: and the particular variety; for example, whether produced by rain or by irrigation: and the quality ; for example, the highest or the lowest: the amount of the price of the thing sold, and the time and place of delivery thereof must be stated.
- 387. It is essential to the validity of the sale by immediate payment against future delivery that the price should be paid at the meeting where the contract is concluded. If the two contracting parties separate before the price is handed over, the contract is cancelled.

SECTION IV. CONTRACT OF MANUFACTURE AND SALE.

- 388. If a person requests a
(1). A purchaser displays his foot to boot-maker and asks him to make a pair of boots from such and such leather for so many piastres and the latter agrees to so so; or a bargain is struck with a ship's carpenter for the building of a rowing boat or ship, after describing the length and breadth and essential qualities thereof. A contract for manufacture and sale has been concluded.
(2). A bargain is concluded with a manufacturer for the production of a certain number of needle guns at so much per gun, after describing the length and the size thereof, and other requirements. A contract for manufacture and sale has been concluded.
- 389. A contract for manufacture and sale is generally valid if it is customer to conclude such a contract. If a period is prescribed, however, in respect to things to which no such custom applies, the conditions applicable in the case of immediate payment against future delivery are in force. If no period is prescribed, however, the contract is in the nature of a contract for manufacture and sale.
- 390. In the case of contract for manufacture and sale, an identification and description of the article must be given as required.
- 391. It is not essential to a contract for manufacture and sale, that the money should be paid immediately.
- 392. After the conclusion of a contract for manufacture and sale, neither party can go back on the bargain they have struck. If, however, the object manufactured is not in accordance with the specification, the person who has given the order may exercise an option.

SECTION V. SALE BY A PERSON SUFFERING FROM A MORTAL SICKNESS.

- 393. If a person suffering from a mortal sickness sells a thing to one of his heirs, such sale is dependent upon the permission of the other heirs. If such heirs give their permission after death of the person suffering from the mortal sickness, such sale becomes executory. If they do not so give their permission, it is not executory.
- 394. If a person suffering from mortal sickness sells a thing to a person who is not one of his heirs at the time of his death for a price equal to the value of such thing, such sale is valid. If he gives favourable terms, that is to say, such thing for less than its value and gives delivery thereof, anyone third of his property allows thereof, and thereafter dies, the sale is valid. If a third of his property is insufficient to allow of such favourable terms, the purchaser must make good such deficiency. If he does not do so, the heir can cancel the sale.

Examples:-

(1). A person suffering from a mortal sickness, and who owns nothing but a house worth one thousand five hundred piastres, sell and delivers such house to a person who is not one of his heirs for one thousand piastres. Such sale is valid, since the five hundred piastres which he has made a subject of his generosity do not exceed a third of his property, and the heir cannot cancel the sale.

(2). If a person suffering from a mortal sickness sells and delivers the house for five hundred piastres, the purchaser is obliged to increase the price to two thirds, upon being requested to do so by the heirs, since the thousand piastres which he has made the subject of his generosity is twice as much as one third of his property. If he does so, the heir cannot cancel the sale. If he fails to do so, the heirs can cancel the sale and demand the return of the house.

- 395. If a person whose estate is overwhelmed by debts and who is suffering from a mortal sickness sells his property for a price less than the true value and then dies, the creditors can oblige the purchaser to make good the balance of the price. If he does not do so, the creditors can cancel the sale.

SECTION VI. SALE SUBJECT TO A RIGHT OF REDEMPTION.

- 396. In sale subject to a right of redemption the vendor may return the price and claim back the thing sold. The purchaser likewise can return the thing sold and claim back the price.
- 397. A thing sold subject to a right of redemption may not be sold to any other person by either the vendor or the purchaser.
- 398. A condition may validly be made that a portion of the profits of the thing sold shall be for the purchaser.

Example:- If it is mutually agreed to make a contract that the grapes of a vineyard sold subject to a right of redemption shall be equally divided between vendor and purchaser, the contract must be carried out.

- 399. If property sold subject to a right of redemption is equal to the amount of the debt and perishes while in the possession of the purchaser, the debt which it secures is cancelled.
- 400. If the value of the property sold subject to a right of redemption is less than the debt and perishes while in the possession of the purchaser, a sum equivalent to the amount of the debt is deducted, and the purchaser can claim the return of the balance from the vendor.
- 401. If the value of the property sold subject to a right of redemption is greater than the amount of the debt and perishes while in the possession of the purchaser, a sum equivalent to the amount of the debt is deducted. If the purchaser has been guilty of some wrongful act, he must make good the balance. If he has not been guilty of any wrongful act, and the property has been destroyed, the purchaser is not obliged to make good the balance.
- 402. If one of the two parties to a sale subject to a right of redemption dies, the right of cancellation is transmitted to his heirs by way of inheritance.
- 403. No other creditors of the vendor have the right of interfering with property sold subject to a right of redemption, until the purchaser thereof has recovered payment of what is due to him.

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